

Remarks

The applicant respectfully requests entry of this amendment, and reconsideration and allowance of the captioned application. Claims 55, 60, 62, 70, 75, 79, 86 and 88 are amended, claim 74 is cancelled without prejudice, and new claims 91-102 are added. Claims 55, 60 and 79 are amended to clarify what is claimed. Claim 62 is amended to correct a typographical error. Non-narrowing amendments of claims 70 and 88 resolve a written description issue. The limitation of claim 86 is incorporated into claim 75 from which claim 86 had depended, and claim 86 is amended to depend from new independent claim 91. New independent claim 91 and its new dependent claims 92-102 include limitations that are similar to limitations in the other pending claims.

1. The Office Action rejected claims 75-79 and 81-90 as being rendered obvious by DeLucia in view of Parsons.

With respect to claim 86, the Office Action asserted that the DeLucia front chamber 34 corresponds with the claimed “slidingly insertable sleeve for holding the pressurized spray cartridge.” However, the DeLucia front chamber 34 is not a slidingly insertable sleeve. It is merely the front chamber of the DeLucia tubular portion 14. DeLucia 2:30-32. DeLucia does disclose a sleeve 46 for enclosing its propellant capsule 44, but that sleeve is not slidingly insertable. It is “fixed to the housing 14 by rivet means 48.” DeLucia 2:40-42. As discussed in paragraph 44 of the captioned application, the slidingly insertable sleeve is preferably not needed when a standard size aerosol canister is used, and may be inserted if a non-standard size canister is used. For example, the slidingly insertable sleeve readily adapts the device for use with a smaller canister that might be more economical for training purposes. DeLucia does not disclose that its

sleeve 46 is removable or that its device can operate without its sleeve 46. Parsons does not disclose any spray dispenser. Therefore, claim 86 (which had depended directly from independent claim 75) should be allowable. Claim 75 is amended to incorporate the limitation of claim 86, so claim 75 should be allowable. Claim 86 is amended to depend from new independent claim 91.

2. Claims 76-85 and 87-90 depend directly or indirectly from claim 75 and should be allowable for that reason alone. In addition, there are independent reasons why many of those dependent claims should be allowable. For example:

The Office Action did not identify, and the cited references do not disclose, a guide pin for guiding movement of the actuator button as recited in claim 78. Therefore, the cited references also do not disclose that a spring for biasing against depression of the actuator is “about the guide pin” as recited in claim 78.

The cited references do not disclose (1) an interchangeable nozzle plate, (2) defining the discharge orifice, and (3) with the different nozzle plates having visible outer surfaces designed respectively to conceal or to reveal the chemical dispersing use of the device, as recited in claim 81. The Office Action referred to the DeLucia head portion 17, that does not satisfy the three limitations just mentioned. DeLucia does have a wall 60 that defines a discharge orifice, but wall 60 is not (and is not intended to be visible). DeLucia does have a “conventional reflector 18” (DeLucia, 2:25-26) that does not define the orifice. There also is no suggestion of using a different reflector in the DeLucia device in order to reveal its chemical dispersing use.

The Office Action did not identify, and the cited references do not disclose, an annular retainer supporting the nozzle plate that defines the discharge orifice, as recited in

claim 84. DeLucia's wall 60 (that defines an orifice) is "held in place by a pair of longitudinally extending, diametrically opposed leaf spring retainers 72 and 74."

DeLucia, 3:1-3.

Similarly, the Office Action did not identify, and the cited references do not disclose, an annular resilient seal member configured to cooperate with an annular surface of the nozzle plate that defines the discharge orifice, as recited in claim 85.

The Office Action did not identify, and the cited references do not disclose, an annular cover sleeve formed of a material that enhances gripping the dispenser, as recited in claim 88.

3. The Office Action rejected claim 55 as being indefinite for omitting an actuator button. The Office Action cites MPEP §2172.01 and states that "[t]he specification does not disclose where the apparatus can function without the actuator button cooperating against the actuator."

The applicant respectfully traverses the rejection. The statutory requirement of the second paragraph of 35 U.S.C. §112 "means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles." *Metabolite Laboratories, Inc. v. Laboratory Corp. of America Holdings*, 370 F.3d 1354, 1366 (Fed. Cir. 2004). A claim can be indefinite "[o]nly after a thorough attempt to understand the meaning of a claim has failed to resolve material ambiguities...." *Id.* The Office Action has not identified any ambiguity in claim 55 in connection with this rejection. The only thing that the cited section of the MPEP states about indefiniteness is that it may apply to a claim that fails to interrelate essential elements of the invention. However, claim 55 recites "in the first position, the cap may

be depressed in a generally radial direction relative to the longitudinal axis mechanically causing the actuator movement.” The claim does interrelate the elements, and its meaning is discernible to one of ordinary skill in the art. Claim 55 does not recite whether there is an actuator button between the cap and the actuator, but only that depressing the cap will mechanically cause the actuator movement.

It may be that the Office Action intended to question enablement (the first paragraph of 35 U.S.C. § 112) rather definiteness. However, the enablement “requirement is satisfied if, given what they already know, the specification teaches those in the art enough that they can make and use the invention without ‘undue experimentation.’” *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1334 (Fed. Cir. 2003).

Given the predictability of the art, a person of ordinary skill in the art will be able to use the disclosure of the captioned application to make and use a device satisfying claim 55.

4. The Office Action rejected claims 55, 70, 77, 78, 80 and 88 as not being supported by an adequate description.

The Office Action referred to “foam material” in claims 70 and 88. Those claims are amended by deleting “foam.”

The Office Action referred to “dispenser,” that is disclosed in paragraph 10 (“spray axially from the dispenser”) and many other places, such as paragraph 55 (“spray from the dispenser 14”).

The Office Action referred to “cap,” that is disclosed in paragraph 54 (“cap portion 98”), for example, and is illustrated best in Figure 21 as one example.

The Office Action referred to claim language about the cap being depressed in a generally radial direction relative to the longitudinal axis, asserting that the intended

direction was not disclosed. Paragraph 57 in conjunction with the drawings conveys to one skilled in the relevant art that the inventor possessed the claimed invention.

Nonetheless, paragraph 57 is amended for clarification purposes.

5. The Office Action rejected claims 55, 74 and 75 as being indefinite. Claim 74 is cancelled without prejudice.

In claims 55 and 75, “chemical” and “pressurized spray cartridge” are introduced in the preamble in connection with the purpose and intended use of the invention. As stated in the Office Action, they are not “positively referred to in the body,” and they are not “claimed in combination as a necessary part” of the claimed device.

Claim 55 is amended to correct a clerical error by deleting “the” prior to “movement of the cap between the first and second positions.”

In claim 75, there is antecedent basis for “the second end” in the fourth and fifth lines (“dispenser having a first end... and an opposite second end”).

6. The Office Action rejected claims 60, 74 and 79 for being in improper dependent form by failing to further limit the subject matter of the claims from which they depend. Claim 74 is cancelled without prejudice. Claims 60 and 79 are amended to clarify that the claimed structure is further limited in that an element is positioned to permit operation as stated in the claim.

7. New independent claim 91 includes limitations that render claim 81 allowable as discussed above. Therefore, claim 91 and its new dependent claims 92-102 should be allowable.

8. Attention is called to application Ser. No. 10/625,388. That application and the captioned application both claim the benefit of the filing date of the same provisional

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application Ser. No. 60/398,717. Consequently, a terminal disclaimer is also being submitted to avoid any potential double patenting issues.

The applicant submits that the claims are in condition for allowance, and requests entry of this Amendment, reconsideration and allowance. Should the Primary Examiner be of the opinion that a telephone conference would expedite prosecution of the application, the applicant requests that he call the undersigned at the below-listed telephone number.

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Respectfully submitted,

  
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